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			HUYNH, SON P	
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# Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com oblonpat@oblon.com jgardner@oblon.com

## Application No. Applicant(s) 10/527.822 KUROSAKI ET AL. Office Action Summary Examiner Art Unit SON P. HUYNH 2424 -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status 1) Responsive to communication(s) filed on 08 September 2008. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-24 is/are pending in the application. 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration. 5) Claim(s) \_\_\_\_\_ is/are allowed. 6) Claim(s) 1-24 is/are rejected. 7) Claim(s) \_\_\_\_\_ is/are objected to. 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) ☐ The drawing(s) filed on 15 March 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some \* c) None of: Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). \* See the attached detailed Office action for a list of the certified copies not received. Attachment(e)

1) Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Ottetment(s) (PTO/05/08) Paper Nots/Mail Date	4) Interview Summary (PTO-413) Paper No(s)Mail Date. 5) If Notice of Informal Pater Linguistics 6) Other:
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### DETAILED ACTION

### Response to Arguments

 Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument regarding to Information disclosure

Statement that merely indication of "X", "Y", or "A" in a search report meets the
requirement for a concise explanation of relevance can be satisfied by submitting and
English-language version of the search report (pages 9-10), the examiner respectfully
traverses.

37 CFR 1.98. Content of information disclosure statement states:

(a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(3)

- (i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant 's specification or incorporated therein.
- (ii) A copy of the translation if a written English-language translation of a non-English-

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language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

Thus, since the reference provided in the IDS is not in English translation, it is not a legible copy.

In addition, if applicant interprets the "concise explanation of the relevance" requirement is met by merely "X", "Y", "A" in the search report, will applicant admits claims 1-4, 21-24 are anticipated by JP 2002-135809 A or JP 11-25541 as indicated in the search report?

Applicant further argues claim 23 has been amended to recite a computer readable storage medium in accordance with Office guidelines (page 10). This argument is respectfully traversed.

M.P.E.P 2106.01 states: a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Similarly, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

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Amended claim 23 recites "a computer readable storage medium including computer program instructions that cause a computer to perform data..." does not necessarily define structural and functional <u>interrelationships</u> between the data structure and the instruction and computer which <u>permit the data structure's functionality</u> to be realized, and is thus not statutory.

For the reasons given above, rejections of claims 1-24 are analyzed as discussed below.

#### Information Disclosure Statement

2. The information disclosure statement filed 3/15/2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the documents do not have English translation copy. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

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### Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

 Claim 23 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 23 recites "a computer readable storage medium including computer program instructions..." does not necessarily define structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized, and is thus non statutory (see M.P.E.P 2106.01 and discussed in the "Response to Arguments" section above.

#### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be neadtived by the manner in which the invention was made.

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Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over
 Goldman (US 2002/0112239 A1) in view of Ellis et al. (US 2003/0020744 A1 – referred as Ellis).

Note: US 2005/0149964 A1 (referred as Thomas), US 2005/0204388 A1 (referred as Knudson), US 2003/0149988 A1 (referred as E988), US 2005/0204387 A1 (referred as K387) are incorporated by reference in Ellis in their entireties (see Ellis - paragraphs 0068, 0092, 0098, 0102, 0104, 0107, 0108). All references incorporated by reference in their entirety in Ellis are treated as part of Ellis specification.

Regarding claim 1, Goldman discloses a data processing apparatus (figure 2) that performs data processing to generate an EPG (Electronic program guide) to be displayed on a display (e.g., EPG generator performs data processing to generate an EPG to be displayed on television screen - figures 2, 4-6), comprising:

program guide data acquiring means for acquiring program guide data that gives guidance on programs (e.g., device at clearinghouse system or at local facility or at home entertainment system for acquires program guide data to generate an EPG to be displayed on television screen - see include, but are not limited to, figures 2-6, paragraphs 0022-0024, 0033-0034, 0042, 0051);

statistical data acquiring means for acquiring statistical data representing degrees of interest in the programs shown by users (e.g., device/component for acquiring/gathering viewing behavior statistics, or viewer activity associated with

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television programs – see include, but are not limited to, figures 2-6, paragraphs 0021-0022, 0025-0028);

EPG generating means for generating an EPG in which the program guide data and the statistical data are displayed in a two-dimensional grid guide format (EPG generator for generating an EPG in which program guide data such as channel number, title, etc. and statistical data such as viewership, percentage of viewing popularity, are displayed in a two-dimensional grid guide format - see include, but are not limited to, figures 2-6, paragraphs 0052-0054). Goldman further discloses different ways to display statistical data/viewership information and program guide data (paragraph 0054). However, Ellis does not explicitly disclose the teaching of superimposing.

Ellis discloses program guide data and other data are superimposed/overlaid (see include, but are not limited to, figures 20a-20b, paragraph 0112). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Goldman with the teaching of superimposing as taught by Ellis in order to yield predictable results such as displaying simultaneously different contents on the screen in larger windows.

Regarding claim 2, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman further discloses the statistical data includes at least one of the numbers of persons who viewed a program during a broadcast time thereof, an audience rating (real time rating) of the program during the

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broadcast time thereof... (see include, but are not limited to, figure 4, paragraphs 0052-0054).

Regarding claim 3, Goldman in view Ellis discloses the data processing apparatus as discussed in the rejection of claim 2. Goldman further discloses the statistical data is obtained on the basis of information transmitted from user terminals of users (statistical data including real time rating data, viewing information, etc. is obtained from user terminals of users - see include, but are not limited to, figure 2, paragraphs 0009-0010, 0022, 0043);

the audience rating (real time rating, viewer preferences, or viewer behavior, or viewer activity, etc.) of program during the broadcast time thereof is obtained using the number of users of the user terminals which transmitted the information a predetermined number of time or more within a predetermined period (e.g., this moment, "real time", or time frame such as minutes, etc.), as a population parameter (see include, but are not limited to, figure 2, paragraphs 0027, 0052).

Regarding claim 4, Goldman in view Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman further discloses EPG transmission means for transmitting a latest EPG generated by the EPG generating means to a user of a user terminal (e.g., component for transmitting the updated/modified EPG generated by EPG generator to viewer of a user terminal - see include, but are not limited to, figures 2-6, paragraphs 0037-0039, 0042-0047, 0049, 0052).

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Regarding claim 5, Goldman in view Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman further discloses history data acquiring means for acquiring, as to each of the users, history data which is a history of actions related to program viewing taken by the user (means for obtaining, or gathering viewing behavior, or viewing activity relating to associated program – see include, but are not limited to, figures 2-6, paragraphs 0022, 0027, 0035-0040);

Goldman in view of Ellis further discloses the EPG generating means generates the EPG in which the program guide data, the statistical data, and the history data are superimposed (see include, but are not limited to, Goldman: figures 2-6, paragraphs 0022, 0027, 0035-0040, 0052-0054; Ellis: figures 20a-20b, paragraphs 0107-0109, 0112).

Regarding claim 6, the limitations that correspond to the limitations of claim 5 are analyzed as discussed in the rejection of claim 5, wherein the "operation data" corresponds to "history data" which is interpreted as activities information/usage data (see also, Goldman: paragraphs 0022, 0035-0040; Ellis: paragraphs 0107-0112).

Regarding claim 7, Goldman in view Ellis further discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman in view of Ellis further discloses the EPG generating means generates the EPG in which the program guide data is displayed in a different manner for different broadcast status of a program (see

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include, but are not limited to, Goldman: paragraphs 0011, 0035, 0049, 0052-0054; or Ellis: figure 7, paragraph 0109 - the program guide client indicate that a program is new to a household by, for example, displaying a suitable icon or changing the display characteristics of listing (e.g., changing its color).

Regarding claim 8, Goldman in view Ellis discloses the data processing apparatus as discussed in the rejection of claim 7. Goldman further discloses program guide data in different manner (see include, but are not limited to, paragraphs 0011, 0052-0054). However, Goldman does not explicitly disclose displaying different manners for a program which ended, a program which is being broadcast and a program which will be broadcast.

Ellis further disclose the EPG generating means generates the EPG in which the program guide data is displayed in different manner for a program which ended, a program which is being broadcast and a program which will be broadcast (e.g., display in different manner such as different color, with a icon, etc., for program was recorded, new program, and program scheduled for recording - see include, but are not limited to, paragraph 0109; E988: paragraphs 0125-0126, figures 11a-11b, 12a-12b, 18a-18f). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Goldman with the teaching as further taught by Ellis in order to allow the user to follow program status on the program guide screen easily.

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Regarding claim 9, Goldman in view Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman further discloses the EPG couple be updated via Internet and the user terminal for displaying the EPG could be computer (paragraphs 0022, 0024, 0033, 0040, 0056, 0060, figure 6)). Thus, the EPG generated by EPG generating means is displayable by a web browser.

Alternatively, Ellis also discloses Ellis further discloses the EPG generated by the EPG generating means is displayable by a web browser (e.g., on line program guide displayable by a web browser – see include, but are not limited to, paragraph 0041; E988: paragraphs 0072, 0160).

Regarding claim 10, Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. The additional limitations that correspond to the additional limitation of claim 9 are analyzed as discussed in the rejection of claim 9, wherein "a dedicated browser" corresponds to "a web browser".

Regarding claim 11, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman further discloses aggregating means for aggregating information transmitted from user terminals of users and obtaining the statistical data (e.g., component such as upstream receiver/interface or processing at clearinghouse system or at local facility for collecting viewing information, statistical information, etc. from the user terminals - see include, but are not limited to, figures 2-6, paragraphs 0022, 0028, 0030, 0039, 0042);

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wherein the statistical data acquiring means acquires the statistical data obtained by the aggregating means (e.g., data processing device/memory acquires the viewing data, activities data, etc. received by the upstream receiver/interface or processing circuitry at local facility or clearinghouse system -see include, but are not limited to, figures 2-6, paragraphs 0037, 0039, 0042-0044).

Regarding claim 12, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 11. Goldman further discloses information of viewer histories/activities are transmitted from the user terminal is information representing that a program is viewed during a broadcast time thereof, or information representing recorded program is viewed, etc. (see include, but are not limited to, paragraphs 0022, 0031, 0035, 0036).

Alternatively, Ellis also discloses the information transmitted from user terminals (e.g., user television equipments) is first information representing that a program is viewed during a broadcast time thereof (e.g., information of user viewing/watching a program in real time/during broadcast time), second information representing that a program recorded during a broadcast time thereof is viewed by playback (e.g., information collected in response to user action of recording a program and playback a recorded program), or third information representing that a program is scheduled for recording (see include, but are not limited to, paragraphs 0010, 0045, 0107-0110; Thomas: paragraphs 0050, 0055-0057, 0067, 0069; E988: paragraphs 0151-0153; E988: figures 12b, 18a-18f).

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Regarding claim 13, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 12. Goldman in view of Ellis further discloses the first information includes information which specifies the program viewed by a user and a viewing date/time of the program (e.g. date and time of action, including program viewed, was taken in the program guide may be monitored and appropriate information may be stored in data structure – see include, but are not limited to, Goldman: paragraphs 0036-0037, 0022; Ellis: paragraphs 0055-0057);

the second information includes information which specifies a recorded program viewed by the user and a viewing date/time of the recorded program which uses a broadcast date/time of the recorded program viewed by the user as a reference (see include, but are not limited to, Goldman: paragraphs 0022, 0036-0037; E988: 0151-0153; Thomas, paragraphs 0055-0057);

the third information includes information which specifies the program which is scheduled for recording or whose recording is canceled, and information representing the recording schedule or cancellation thereof (e.g., information which specifies the program which is schedule for recording and information representing the recording schedule such as title, time, etc. - see include, but are not limited to, Goldman: paragraphs 0022, 0036-0037, 0039; E988: figures 11a-11b, 12a-12b, 18a-18f; Thomas: paragraphs 0055-0057).

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Regarding claim 14, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 13. Goldman in view of Ellis further disclose the first and second information further include a good impression level representing how the users feel about the program (e.g., high number of viewers selected/viewed program, or strong like, week like, high demand, etc. - see include, but are not limited to, Goldman: paragraphs 0022, 0052-0054; Ellis: figures 13a-13d; Thomas, paragraph 0070).

Regarding claim 15, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 13. Goldman in view of Ellis further discloses actual viewing date/time at which the user viewed the recorded program (see include, but are not limited to, Goldman: paragraphs 0022, 0036-0037, 0039, 0049, 0052-0054; E988: paragraphs 0151-0157; Thomas, paragraph 0055-0057).

Regarding claim 16, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 11. Goldman in view of Ellis further discloses the information transmitted from the user terminal includes date/time information about broadcast dates/times of the programs (see include, but are not limited to, Goldman: paragraphs 0022, 0036-0039, 0052-0054; Ellis: paragraph 0100-0104, 0109; E988: figure 18f; Knudson: figures 10, 13-16);

the aggregation means aggregates the information transmitted from the user terminals for predetermined time intervals on the basis of the date/time information

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included in the information (e.g., upstream receiver interface/ processing circuitry receives user information/viewer activities in predetermined time frame - see include, but are not limited to, Goldman: paragraphs 0027, 0031, 0034, 0036-0039; Ellis: paragraphs 0100-0104, 0108-0109, 0119, 0125; E988: figure 18f; Knudson: figures 10, 13-16).

Regarding claim 17, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 11. Goldman in view of Ellis further discloses the aggregation means sorts and stores the information transmitted from the user terminal by the users (e.g., the collected information is filtered/analyzed and stored in storage device - see include, but are not limited to, Goldman: paragraphs 0043, 0044, figures 2, 6; Ellis: paragraphs 0010, 0045, 0107, 0108, 0119, 0125; Thomas, paragraphs 0069-0075).

Regarding claim 18, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 11. Goldman in view of Ellis further discloses the aggregation means determines whether or not the information transmitted from the user terminals is valid, and takes only valid information for aggregation (e.g., analyzing, filtering less important data and taking only high important data or desired data - see include, but are not limited to, Goldman: paragraphs 0037, 0043, 0044; Ellis: paragraphs 0107-0112; Thomas: paragraphs 0069-0075).

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Regarding claim 19, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 11. Goldman in view of Ellis further discloses the aggregation means aggregates the information transmitted from the user terminals for each of user attributes (e.g., user identifier, user profile, user demographic values, or subscriber ID, etc. see include, but are not limited to, Goldman: paragraphs 0022, 0036-0037; Ellis: paragraphs 0107-0112, 0119, 0120; Thomas, paragraphs 0072-0073).

Regarding claim 20, Goldman in view of Ellis discloses data processing apparatus as discussed in the rejection of claim 11. Goldman in view of Ellis further discloses the information transmitted from the user terminals includes a good impression level representing how the users feel about a program (see discussion in the rejection of claim 14);

the aggregation means aggregates the good impression level for each of the programs (upstream receiver or processing circuitry aggregates the viewing behavior, viewing activity, or user preferences including strong like, weak like, etc. for each of the programs - see include, but are not limited to, figures 2-6, paragraphs 0022, 0036-0037, 0052-0054; Ellis: figures 2a-2d, 13a-13d, paragraphs 0089-0090, 0107-0112; Thomas: paragraphs 0069-0073).

Regarding claim 21, Goldman in view of Ellis discloses the data processing apparatus as discussed in the rejection of claim 1. Goldman in view of Ellis further discloses generating EPG in which the program guide data for one day is displayed on one page

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(e.g., from 800 to 9:30 of a day -see Goldman: figure 4; or the program guide server or EPG generating device at user television generates an EPG in which when the user selects day button or page up/page down, or day forward, day backward for the listing of a day (see include, but are not limited to, K387: paragraphs 0099-0101; E988: paragraph 0072, and US 2003/0066085 (continuation of 08/938,028 which is incorporated by reference in its entirety in E988) figures 16-22, 26, paragraph 0103).

Regarding claim 22, the limitations of the method that correspond to the limitations of the apparatus of claim 1 are analyzed as discussed with respect to the rejection of claim 1.

Regarding claim 23, the limitations of the computer readable storage medium that correspond to the limitations of the apparatus of claim 1 are analyzed as discussed in the rejection of claim 1. Goldman further discloses the computer readable storage medium for storing instructions being executed by a set top box or other computer to perform all functions (paragraphs 0023-0024).

Regarding claim 24, the limitations that correspond to the limitations of claim 1 are analyzed as discussed in the rejection of claim 1. Goldman further discloses a server (e.g., signal source, network or clearinghouse system) for transmitting information (figures 1-6); and a user terminal (e.g., home entertainment system, television set, set

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top box, etc.) for receiving information from the server (see include, but are not limited to, figures 1-6, paragraphs 0022, 0029-0034, 0042).

#### Conclusion

 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Johnson (US 2002/0083448 A1) discloses dedicated channel for displaying programs.

Ellis et al. (US 6,774,926 B1) discloses personal television channel system.

 THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON P. HUYNH whose telephone number is (571)272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son P Huynh/ Primary Examiner, Art Unit 2424

October 29, 2008